Supreme Court, U.S.
FILED
MAY 19 1997
OFFICE OF THE CLERK

(3)

No. 96-1589

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

CARROLL W. COLFORD,
Petitioner,

v.

CHUBB LIFE INSURANCE COMPANY OF AMERICA,
Respondent.

On Petition For Writ of Certiorari To The Maine Supreme Judicial Court

REPLY BRIEF FOR PETITIONER

RONALD D. MAINES
(*Counsel of Record*)
R. SHAWN GUNNARSON
MAINES & LOEB, PLLC
2300 M Street, N.W.
Suite 900
Washington, D.C. 20037
(202) 223-2817

13 pp

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT 1

1. *Federal jurisdiction* 2

2. *Other Matters* 7

CONCLUSION 10

TABLE OF AUTHORITIES

CASES

BMW v. Gore, 116 S.Ct. 1589 (1996) ..... *passim*

Gray v. State of Maine, 624 A.2d 479 (Me. 1993) 8, 9, 10

Heath v. Alabama, 474 U.S. 82 (1985) 2

Honda Motor Co. v. Oberg, 114 S.Ct. 2331 (1994) 3

Howlett v. Rose, 496 U.S. 356 (1990) 4

Michigan v. Long, 463 U.S. 1032 (1983) 4

New York ex rel. Bryant v. Zimmerman, 278 U.S. 63 (1928) 3

Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1 (1991) .. 3

Street v. New York, 394 U.S. 576 (1969) 2

Terre Haute & Indianapolis R.R. Co. v. Indiana ex rel. Ketcham, 194 U.S. 579 (1904) 4

TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443 (1993) 3

Yee v. Escondido, 503 U.S. 519 (1992) 2

CONSTITUTIONAL AND STATUTORY PROVISIONS

28 U.S.C. § 1254(1) 7

28 U.S.C. § 1257(a) 3, 7

U.S. CONST. amend. XIV, § 1 . . . . . *passim*

ARGUMENT

This case raises a substantial question about the discretion a State court possesses to interpret State law, when its interpretation avoids a claim asserted under the United States Constitution. May a State court rely on inadequate State grounds to avoid deciding whether a jury award of $24 million in punitive damages meets the constitutional standard articulated by this Court in *BMW v. Gore*, 116 S.Ct. 1589 (1996)?

Respondent Chubb Life Insurance Company of America (Chubb) refused to pay disability coverage to Petitioner Carroll W. Colford (Colford), one of its general agents, who permanently injured his back when he fell down some stairs. At trial the jury returned a unanimous verdict on all counts and awarded Colford $24,002,000 in punitive damages on a claim for intentional infliction of emotional distress. Despite such overwhelming jury support for Colford's case, and despite the court's earlier denial of Chubb's motion for directed verdict, the trial court granted judgment as a matter of law for Chubb on Colford's claim for intentional infliction of emotional distress. The state supreme court affirmed. Since Maine law requires proof of liability in tort as a predicate for receiving punitive damages, this judgment took away from Colford the entire award for punitive damages.

The Question Presented asks this Court to decide whether the judgment of the Maine supreme court rests on inadequate State grounds. In the proceedings before the Maine supreme court, both parties briefed whether the punitive damages award violates the Fourteenth Amendment Due Process Clause. The court skirted that substantial federal question by deciding that no reasonable jury could find Chubb liable to Colford for intentional infliction of emotional distress.

According to settled precedent, this Court has jurisdiction to decide whether the asserted grounds of that judgment under Maine law are adequate to avoid the substantial federal question under the Due Process Clause. If left uncorrected, the judgment in this case would mean, in effect, that State courts may evade the difficult work of bringing punitive damage awards into compliance with the due process standard articulated in *BMW v. Gore*, 116 S.Ct. 1589 (1996), by handing down anomalous decisions only superficially based on State law.

Chubb advances several reasons for denying review. None of them is persuasive.

1. *Federal jurisdiction.* Chubb contends on two grounds that the Court lacks jurisdiction to review the judgment of the Maine supreme court in this case. First, it argues that the opinion of the court contains "no issue of federal statutory or Constitutional law." Br. Opp. at 7. Second, it argues that the "independent and adequate state ground" doctrine furnishes no basis for the Court's jurisdiction. *See* Br. Opp. 8-14. On both points Chubb is mistaken.

A. With "very rare exceptions," *Yee v. Escondido*, 503 U.S. 519, 533 (1992), the Court exercises jurisdiction under 28 U.S.C. § 1257(a) only if a petitioner's federal claim was expressly addressed by the State court or properly presented for its review. *See, e.g., Heath v. Alabama*, 474 U.S. 82, 87 (1985). If the opinion of the State court does not expressly address the federal claim, the petitioner bears the burden of proving that the claim was nonetheless properly presented. *See Street v. New York*, 394 U.S. 576, 582 (1969). To meet that burden the petitioner must show that his federal claim was

"brought to the attention of the state court with fair precision and in due time." *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928). Thus, whether the State court opinion contains citations to federal statutory or constitutional provisions is not the sole touchstone of jurisdiction under 28 U.S.C. § 1257(a). Jurisdiction lies with the Court so long as the petitioner can show that the federal claim was presented below "with fair precision and in due time." *Id.* Colford can make that showing in this case.

In his reply brief before the Maine supreme court, Colford raised a substantial federal question under the Fourteenth Amendment Due Process Clause. Chubb claimed in its reply brief that the $24 million punitive damage award exceeded the due process limits laid down by the Court in *Pacific Mutual Life Insurance Company v. Haslip*, 499 U.S. 1 (1991), *TXO Production Corporation v. Alliance Resources Corporation*, 509 U.S. 443 (1993), and *Honda Motor Company v. Oberg*, 114 S.Ct. 2331 (1994). *See* Chubb Rep. Br. at 30-32.[1] Colford responded with a constitutional claim of his own, namely that the Fourteenth Amendment Due Process Clause does not prohibit the State of Maine from imposing $24,002,000 in punitive damages, given the egregious facts of this case. Colford Rep. Br. at 11-13. Colford's claim was not only constitutionally precise—he noted the correct constitutional provision and the kind of constitutional

---

[1]Chubb's reply brief nowhere mentions *BMW v. Gore*, 116 S.Ct. 1589 (1996) because the brief was filed on March 20, 1996, and the Court handed down its opinion in *BMW* two months later, on May 20, 1996. Furthermore, since the Maine supreme court did not address the constitutional issue in its opinion, neither party had occasion to cite the *BMW* opinion after it was released. If the Court were to grant review, however, *BMW* would obviously apply as controlling precedent.

protection he sought—but timely. Colford raised the claim at the earliest opportunity, since the nature of the claim requires a trial court judgment as a predicate, and he briefed the due process claim before the first appellate court to review that judgment. Contrary to Chubb's assertions, Colford's constitutional question was thus properly raised.

B. Chubb's second objection to the Court's jurisdiction rests on a misunderstanding of the adequate and independent state grounds doctrine.

In *Michigan v. Long*, 463 U.S. 1032 (1983), the Court held that it would presume jurisdiction to review a state court decision if the judgment under review lacked "a plain statement that [it] rested on an adequate and independent state ground." *Id.* at 1044. Because the independence of the state ground of decision is not in question here, Colford's jurisdictional argument focuses on whether the Maine supreme court's state law ground of decision is *adequate*.

The principle that the Court has jurisdiction to decide whether a State court judgment rests on adequate State grounds is well-established. "The adequacy of the state-law ground to support a judgment precluding litigation of the federal claim is itself a federal question which we review *de novo*." *Howlett v. Rose*, 496 U.S. 356, 366 (1990). Such review serves the vital purpose of ensuring State court fidelity to the Supremacy Clause. *See id.* at 366-67 n.14. For without jurisdiction to determine whether a purported State law ground of decision is adequate, a State court could refuse to vindicate a federal claim and then defeat the Court's jurisdiction through the "easy method," *Terre Haute & Indianapolis R.R. Co. v. Indiana ex rel. Ketcham*, 194 U.S.

579, 589 (1904) (Holmes, J.), of resting judgment on superficially authoritative (but in fact, inadequate) State law grounds. It is precisely that state of affairs which occurred below. Thus, contrary to Chubb's objections, this case qualifies as an instance where the Court's jurisdiction under the "inadequate state ground" doctrine is appropriate.

Chubb also argues that Colford has made no valid constitutional claim. *See* Br. Opp. at 11-12. It draws this conclusion based on two reasons: federal law does not entitle Colford to punitive damages, *per se*, and Chubb's *BMW* claim is only a "potential Constitutional law defense." *Id.* at 12. Neither reason withstands scrutiny.

Chubb urges that Colford is entitled to punitive damages only as a matter of State law. As Chubb puts it, "There is no federal Constitutional or statutory right to receive punitive damages in an action based on state tort law." Br. Opp. at 11. This statement is true but irrelevant. Colford nowhere argues in his petition that federal law entitles him to punitive damages. Chubb's point that Maine could "do away with punitive damages in their entirety if they so choose," *id.*, is likewise irrelevant since Maine's discretion to eliminate punitive damages as a remedy for intentional infliction of emotional distress is not at issue.

Chubb further argues that Colford cannot rely for jurisdiction on "the mere existence of Chubb's Due Process defense to the punitive damages award." Br. Opp. at 12. This argument fails for two reasons. First, Chubb's "Due Process defense" is in reality a *claim*, namely, the claim that the Due Process Clause prohibits the State of Maine from imposing $24 million in punitive damages against Chubb, presumably on

the ground that the award is "grossly excessive" as that term has been defined by the Court. Second, if by "mere existence" Chubb means to suggest that its due process claim is somehow dormant, it is simply mistaken. Chubb in fact asserted this claim, and Colford answered it. Colford's answer—the $24 million jury award in punitive damages is *not* "grossly excessive," so as to be prohibited by the Due Process Clause—poses a constitutional question that Chubb may not merely wish away.

As a final attempt to persuade the Court to deny jurisdiction, Chubb draws the following implication from Colford's petition.

> Taken to its logical conclusion, Colford's argument would suggest that in every case in which a party has a potential Constitutional defense, including every case in which punitive damages are sought, this Court would have jurisdiction to review all defense verdicts, regardless of whether the Constitutional defense played any role in the decision.

Br. Opp. at 12. This suggestion is chimerical, as it depends for its force on a misreading of Colford's argument. Read correctly, his argument means only that a party who actually asserts a defense to a federal constitutional claim, *and whose defense is avoided on inadequate state grounds*, may invoke jurisdiction in this Court. With these qualifications, Colford's jurisdictional argument does not embrace "every [State court] case in which a party has a potential Constitutional defense." It merely applies established precedent to justify review in a case where the Court's constitutionalization of punitive damages makes such review implicitly available.

In sum, Chubb's jurisdictional objections are ill-founded. This case presents a substantial federal question that Colford properly raised in the courts below.

2. *Other Matters.* Chubb notes that Colford cited 28 U.S.C. § 1254(1), when he intended to cite 28 U.S.C. § 1257(a) as the basis for the Court's jurisdiction. Br. Opp. at 7. We apologize for this clerical error. Chubb's Brief in Opposition is marred by several errors of its own, two of which, in particular, require correction.

A. In its statement of the case, Chubb describes Colford's injury in the following terms:

> Colford reported to a doctor that he had fallen down a flight of stairs on April 30, 1991 and injured his back. While a series of subsequent exams by neurologists showed that Colford was *completely normal from a neurological standpoint*, he *nevertheless* continued to report pain involving his cervical and lumbar spine.

Br. Opp. at 2 (emphasis added). This passage suggests that Colford's injury and its resulting pain is imaginary—at least "from a neurological standpoint"—and that, at worst, Colford has been falsely reporting back pain to get money from Chubb. As the record shows, nothing could be further from the truth.

Two neurosurgeons examined Colford. Dr. Doolittle concluded that Colford's injuries were "not amenable to surgery," App. II, vol. 3, at 487, and recommended a course of non-surgical treatment instead. Even Dr. Ciembroniewicz, the neurosurgeon who examined Colford on behalf of Chubb, admitted that Colford suffered from "a *severe*

musculoligamentous injury." *Id.* at 491 (emphasis added). Dr. Harrison Aldrich, Colford's personal physician, concluded upon examination that Colford suffered from severe pain from torn tendons, herniated discs, and muscle damage in his cervical and lumbar region. App. II, vol. 3, at 461, 462, 468, 560. Moreover, Colford's injuries were assessed as permanently disabling by the Social Security Administration of the United States, App. II, vol. 3, at 300, and the State of Maine, Worker's Compensation Commission, App. II, vol. 6, at 1845, 1856.

B. Chubb contends that its conduct in this case was not "extreme and outrageous," as that phrase has been interpreted under Maine law. Br. Opp. at 13-14. Toward the end of this argument Chubb remarks that "Colford oddly seems to agree." *Id.* at 14. Chubb claims to locate support for this astonishing proposition—Colford *agrees* with Chubb that it is not liable for intentional infliction of emotional distress—in Colford's petition itself.

> As part of his summary, Colford describes the decision in *Gray v. State of Maine*, 624 A.2d 479 (Me. 1993), as "probably the closest case" to the present, even though the Law Court there ruled that a human services caseworker's neglect and misrepresentations in a child protection investigation, which resulted in the plaintiff's son being removed from the plaintiff's care, "was not such extreme and outrageous conduct as to warrant a recovery . . . ." *Id.* at 484.

Chubb has quoted the phrase "probably the closest case" out of context.

One of the key arguments in Colford's petition is that the Maine supreme court's judgment, which affirmed the trial court's grant of judgment as a matter of law against Colford's claim for intentional infliction of emotional distress, rests on inadequate State grounds. Pet. at 16-19. To substantiate this point, Colford summarized several intentional infliction of emotional distress cases decided under Maine law. *Id.* at 17-19. The summary divided the cases into two categories. In one category the court held that the defendant's conduct met the "extreme and outrageous" standard necessary to prove liability for intentional infliction of emotional distress. In the other category the court held that the defendant's conduct failed to meet that standard.

Toward the end of the paragraph of the petition that summarizes the "no liability" category of cases, the following passage appears:

> Finally, in what is probably the closest case, in light of competent evidence on which the state based its decisions, a human services caseworker's neglect or refusal to interview available professionals with exculpatory explanations for the child's symptoms and the caseworker's misrepresentation of the opinions of two social workers to buttress his own suspicions, was held to be insufficiently extreme and outrageous to warrant recovery from the state. *Gray v. State of Maine*, 624 A.2d 479 (Me. 1993). The egregiousness of Chubb's repeated misconduct, and its physical effects on Colford—he vomited blood, acquired ulcers, suffered nausea, and lost sleep out of anxiety over Chubb's actions—exceed even these troubling facts.

Br. Opp. at 19. As the context makes plain, "probably the closest case" does *not* mean "probably the closest case to the case at bar." It rather means that *Gray* is an illustrative case closest to the line separating liability from non-liability, but nevertheless *not* problematic to Colford's analysis because Chubb's conduct was more egregious than the conduct exhibited by the defendant in *Gray*. Chubb claims that its conduct is not outrageous and reads the above passage to mean that "Colford oddly seems to agree." Br. Opp. 14. On the contrary. Colford does *not* agree—oddly or otherwise.

CONCLUSION

The petition should be granted.

Respectfully submitted,

Ronald D. Maines
(*Counsel of Record*)
R. Shawn Gunnarson
MAINES & LOEB, PLLC
2300 M Street, N.W., Suite 900
Washington, D.C. 20037
(202) 223-2817

May 19, 1997